

Dear Senators HEIDER, Souza, Jordan, and  
Representatives WOOD, Packer, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the Department of Health and Welfare:

IDAPA 16.03.09 - Medicaid Basic Plan Benefits - Proposed Rule (Docket No. 16-0309-1807);

IDAPA 16.03.09 - Medicaid Basic Plan Benefits - Proposed Rule (Docket No. 16-0309-1808);

IDAPA 16.03.09 - Medicaid Basic Plan Benefits - Proposed Rule (Docket No. 16-0309-1810);

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Temporary and Proposed Rule (Docket No.  
16-0310-1807).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 11/13/2018. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/12/2018.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

**FROM:** Principal Legislative Drafting Attorney - Elizabeth Bowen

**DATE:** October 24, 2018

**SUBJECT:** Department of Health and Welfare

IDAPA 16.03.09 - Medicaid Basic Plan Benefits - Proposed Rule (Docket No. 16-0309-1807)

IDAPA 16.03.09 - Medicaid Basic Plan Benefits - Proposed Rule (Docket No. 16-0309-1808)

IDAPA 16.03.09 - Medicaid Basic Plan Benefits - Proposed Rule (Docket No. 16-0309-1810)

IDAPA 16.03.10 - Medicaid Enhanced Plan Benefits - Temporary and Proposed Rule (Docket No. 16-0310-1807)

#### Summary and Stated Reasons for the Rule

Docket No. 16-0309-1807: This rule establishes a reimbursement methodology for non-emergency medical transport (NEMT) as provided through Idaho's Medicaid program. Specifically, the Department will pay a fixed per-member, per-month rate to an NEMT services broker who administers the NEMT program according to certain standards. This rule is being promulgated as a result of HB 695 (2018), which directed the Department to establish processes to improve the NEMT program.

Docket No. 16-0309-1808: This rule conforms the definitions for community based rehabilitation services provided in schools and such services provided in the community.

Docket No. 16-0309-1810: This rule removes a prenatal exemption for third-party liability under the Medicaid program. This change is being made to conform to federal regulations.

Docket No. 16-0310-1807: This temporary and proposed rule provides that the Department has the authority to terminate a Medicaid participant from enrollment in home and community based services (HCBS) if the participant fails to meet certain requirements. The purpose for the rule is to conform with federal guidance issued by the Centers for Medicare and Medicaid Services. The Governor finds that there is justification for the temporary rule in order to align Idaho's program with federal requirements.

#### Negotiated Rulemaking / Fiscal Impact

Docket No. 16-0309-1807 (NEMT): Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund.

Docket No. 16-0309-1808 (community based rehabilitation services): Negotiated rulemaking was conducted, and there is no anticipated negative fiscal impact on the state general fund.

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

Docket No. 16-0309-1810 (prenatal exemption): Negotiated rulemaking was not conducted due to the nature of the rule change, which is to conform to federal regulations. There is no anticipated negative fiscal impact on the state general fund.

Docket No. 16-0310-1807 (HCBS): Negotiated rulemaking was not conducted, as it was not considered feasible. There is no anticipated negative fiscal impact on the state general fund.

**Statutory Authority**

Docket No. 16-0309-1807 (NEMT): I.C. 56-202.

Docket No. 16-0309-1808 (community based rehabilitation services): I.C. 56-202.

Docket No. 16-0309-1810 (prenatal exemption): I.C. 56-202.

Docket No. 16-0310-1807 (HCBS): I.C. 56-202, 56-264, and 56-1610.

cc: Department of Health and Welfare  
Frank Powell and Trinette Middlebrook

**\*\*\* PLEASE NOTE \*\*\***

Per the Idaho Constitution, all administrative rules must be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**

**16.03.09 – MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1807**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202(b), Idaho Code; also Section 1905(a) of the Social Security Act and House Bill 695 (2018).

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<b>PUBLIC HEARING</b>
<b>Tuesday, October 16, 2018 - 11:00 a.m. (MDT)</b>
<b>Department of Health &amp; Welfare Medicaid Central Office 3232 Elder Street Conference Room D-East Boise, ID 83705</b>
<b>TELECONFERENCE CALL-IN</b>
<b>Toll Free: 1-877-820-7831 Participant Code: 701700</b>

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In House Bill 695 (2018), the Legislature directed the Department’s Division of Medicaid to implement processes to improve the Non-Emergency Medical Transportation (NEMT) program. These processes will include developing and implementing a provider training program and conducting a rate review process to set reimbursement rates at a level that will enhance service quality and participant access. These rule changes are needed to meet the legislative intent of House Bill 695 (2018).

These rule changes add participation in provider training programs and rate-setting activities to the existing duties of the transportation broker described in this chapter.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no fiscal impact for this docket to the State General Fund for SFY 2020. The fiscal impact is limited to the amount appropriated to IDHW by the legislature in House Bill 695 (2018) for SFY 2019 for the Division of Medicaid to develop and implement a Non-Emergency Medical Transportation (NEMT) provider training program and conduct a rate review process. The rate reviews will be used to establish the contracted per member per month rate, which could in turn produce a positive or negative fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018, Idaho Administrative Bulletin, [Vol. 18-7, pages 109 and 110](#).

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Clay Lord at (208) 364-1979.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500 / Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1807**  
**(Only Those Sections With Amendments Are Shown.)**

**873. NON-EMERGENCY MEDICAL TRANSPORTATION SERVICES: REIMBURSEMENT METHODOLOGY.**

The Department will reimburse the NEMT services broker a fixed, actuarially sound amount per member per month based on the cost of efficiently delivered, timely, and safe non-emergency medical transportation for eligible Idaho Medicaid participants and the cost for efficient administration of the brokerage program. ( )

**8734. -- 879. (RESERVED)**

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**

**16.03.09 – MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1808**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202(b), Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<b>PUBLIC HEARING - LIVE MEETING</b>
<b>Wednesday, October 24, 2018 3:30 - 4:30p.m. (MT)</b>
<b>Medicaid Central Office 3232 Elder St. Conf. Room D West &amp; East Boise, ID 83705</b>

<b>VIDEO CONFERENCE Eastern Idaho - DHW Office</b>	<b>VIDEO CONFERENCE Northern Idaho - DHW Office</b>
<b>Wednesday, October 24, 2018 3:30 - 4:30p.m. (MT)</b>	<b>Wednesday, October 24, 2018 2:30 - 3:30p.m. (PT)</b>
<b>1070 Hiline Road (Brown Brick Building) Second Floor, Ste. 230 VC Conf. Room Pocatello, ID 83201</b>	<b>1120 Ironwood Drive Suite 102 Lower Level - Large Conf. Room Coeur d'Alene, ID 83814</b>

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These proposed changes align definitions for Community Based Rehabilitation Services (CBRS) in schools and in the community.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking has no anticipated fiscal impact to the state general fund or to any other funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the July 4, 2018 Idaho Administrative Bulletin, [Vol. 18-7, pages 111 and 112](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Angie Williams, (208) 287-1169.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1808**  
**(Only Those Sections With Amendments Are Shown.)**

**850. SCHOOL-BASED SERVICE: DEFINITIONS.**

**01. Activities of Daily Living (ADL) for Personal Care Services.** The performance of basic self-care activities in meeting an individual's needs for sustaining him in a daily living environment, including, but not limited to, bathing, washing, dressing, toileting, grooming, eating, communication, continence, mobility, and associated tasks. (7-1-16)

**02. Educational Services.** Services that are provided in buildings, rooms, or areas designated or used as a school or an educational setting, which are provided during the specific hours and time periods in which the educational instruction takes place in the school day and period of time for these students, which are included in the individual educational plan (IEP) for the student. (7-1-16)

**03. School-Based Services.** School-based services are health-related and rehabilitative services provided by Idaho public school districts and charter schools under the Individuals with Disabilities Education Act (IDEA). (7-1-13)

**04. The Psychiatric Rehabilitation Association (PRA).** An association that works to improve and promote the practice and outcomes of psychiatric rehabilitation and recovery. The PRA also maintains a certification program to promote the use of qualified staff to work for individuals with mental illness. <http://www.uspra.org>. (7-1-16)

**05. PRA Credential.** Certificate or certification in psychiatric rehabilitation based upon the primary population with whom the individual works in accordance with the requirements set by the PRA. ( )

**056. Practitioner of the Healing Arts.** A physician's assistant, nurse practitioner, or clinical nurse specialist who is licensed and approved by the state of Idaho to make such recommendations or referrals for Medicaid services. (7-1-13)

**067. Serious Mental Illness (SMI).** In accordance with 42 CFR 483.102(b)(1), a person with SMI: (3-20-14)

a. Currently or at any time during the year, must have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified in the DSM-V; and (3-20-14)

b. Must have a functional impairment that substantially interferes with or limits one (1) or more major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning with an individual's basic daily living skills, instrumental living skills, and functioning in social, family, vocational or educational contexts. Instrumental living skills include maintaining a household, managing money, getting around the community, and taking prescribed medication. An adult who met the functional impairment criteria during the past year without the benefit of treatment or other support services is considered to have a serious mental illness. (3-20-14)

~~078.~~ **Serious and Persistent Mental Illness (SPMI).** A participant must meet the criteria for SMI, have at least one (1) additional functional impairment, and have a diagnosis under DSM-V with one (1) of the following: Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis. (3-20-14)

**(BREAK IN CONTINUITY OF SECTIONS)**

**852. SCHOOL-BASED SERVICE: SERVICE-SPECIFIC PARTICIPANT ELIGIBILITY.**

Skills Building/Community Based Rehabilitation Services (CBRS). Behavioral Intervention, Behavioral Consultation, and Personal Care Services (PCS) have additional eligibility requirements. (~~7-1-16~~)(      )

**01. Skills Building/Community Based Rehabilitation Services (CBRS).** To be eligible for Skills Building/CBRS, the student ~~participant~~ must meet one (1) of the following: (~~7-1-16~~)(      )

a. A student who is a child under eighteen (18) years of age must meet the Serious Emotional Disturbance (SED) eligibility criteria for children in accordance with the Children's Mental Health Services Act, Section 16-2403, Idaho Code. A child who meets the criteria for SED must experience a substantial impairment in functioning. The child's level and type of functional impairment must be documented in the school record. A Department-approved assessment must be used to obtain the child's initial functional impairment score. Subsequent scores must be obtained at least annually in order to determine the child's change in functioning that occurs as a result of mental health treatment. (7-1-16)

b. A student who is eighteen (18) years old or older must meet the criteria of Serious and Persistent Mental Illness (SPMI). This requires that a student participant meet the criteria for SMI, as described in 42 CFR 483.102(b)(1), have at least one (1) additional functional impairment, and have a diagnosis under DSM-V, or later edition, with one (1) of the following: Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis. In addition, the psychiatric disorder must be of sufficient severity to affect the participant's functional skills negatively, causing a substantial disturbance in role performance or coping skills in at least two (2) of the areas listed below on either a continuous or intermittent basis, at least once per year. The skill areas that are targeted must be consistent with the participant's ability to engage and benefit from treatment. The detail of the participant's level and type of functional impairment must be documented in the medical record in the following areas: (7-1-16)

- i. Vocational/educational; (3-20-14)
- ii. Financial; (3-20-14)
- iii. Social relationships/support; (3-20-14)
- iv. Family; (3-20-14)



- v. Basic living skills; (3-20-14)
- vi. Housing; (3-20-14)
- vii. Community/legal; or (3-20-14)
- viii. Health/medical. (3-20-14)

**02. Behavioral Intervention and Behavioral Consultation.** To be eligible for behavioral intervention and behavioral consultation services, the student must: (3-20-14)

**a.** Meet the criteria for developmental disabilities as identified in Section 66-402(5), Idaho Code, and have documentation to support eligibility using the standards under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 501-503; and (7-1-16)

**b.** Exhibit maladaptive behaviors that include frequent disruptive behaviors, aggression, self-injury, criminal or dangerous behavior evidenced by a score of at least one point five (1.5) standard deviations from the mean in at least two (2) behavior domains and by a rater familiar with the student, or at least two (2) standard deviations from the mean in one (1) composite score that consists of at least three (3) behavior domains by a rater familiar with the student, on a standardized behavioral assessment approved by the Department; and (7-1-16)

**c.** Have maladaptive behaviors that interfere with the student's ability to access an education. (3-20-14)

**03. Personal Care Services.** To be eligible for personal care services (PCS), the student must have a completed children's PCS assessment and allocation tool approved by the Department. To determine eligibility for PCS, the assessment results must find the student requires PCS due to a medical condition that impairs the physical or functional abilities of the student. (7-1-16)

**853. SCHOOL-BASED SERVICE: COVERAGE AND LIMITATIONS.**

The Department will pay school districts and charter schools for covered rehabilitative and health-related services. Services include medical or remedial services provided by school districts or other cooperative service agencies, as defined in Section 33-317, Idaho Code. (7-1-13)

**01. Excluded Services.** The following services are excluded from Medicaid payments to school-based programs: (3-30-07)

**a.** Vocational Services. (3-30-07)

**b.** Educational Services. Educational services (other than health related services) or education-based costs normally incurred to operate a school and provide an education. Evaluations completed for educational services only cannot be billed. (3-30-07)

**c.** Recreational Services. (3-30-07)

**d.** Payment for school-related services will not be provided to students who are inpatients in nursing homes or hospitals. (7-1-16)

**02. Evaluation and Diagnostic Services.** Evaluations to determine eligibility or the need for health-related services may be reimbursed even if the student is not found eligible for health-related services. Evaluations completed for educational services only cannot be billed. Evaluations completed must: (3-30-07)

**a.** Be recommended or referred by a physician or other practitioner of the healing arts. A school district or charter school may not seek reimbursement for services provided more than thirty (30) days prior to the signed and dated recommendation or referral; (3-28-18)

- b. Be conducted by qualified professionals for the respective discipline as defined in Section 855 of these rules; (3-20-14)
- c. Be directed toward a diagnosis; (7-1-16)
- d. Include recommended interventions to address each need; and (7-1-16)
- e. Include name, title, and signature of the person conducting the evaluation. (7-1-16)

**03. Reimbursable Services.** School districts and charter schools can bill for the following health-related services provided to eligible students when the services are provided under the recommendation of a physician or other practitioner of the healing arts for the Medicaid services for which the school district or charter school is seeking reimbursement. A school district or charter school may not seek reimbursement for services provided more than thirty (30) days prior to the signed and dated recommendation or referral. The recommendations or referrals are valid up to three hundred sixty-five (365) days. (3-28-18)

**a. Behavioral Intervention.** Behavioral Intervention is used to promote the student's ability to participate in educational services, as defined in Section 850 of these rules, through a consistent, assertive, and continuous intervention process to address behavior goals identified on the IEP. It includes the development of replacement behaviors by conducting a functional behavior assessment and behavior implementation plan with the purpose of preventing or treating behavioral conditions for students who exhibit maladaptive behaviors. Services include individual or group behavioral interventions. (7-1-16)

i. Group services must be provided by one (1) qualified staff providing direct services for a maximum of three (3) students. (7-1-16)

ii. As the number and severity of the students with behavioral issues increases, the staff-to-student ratio must be adjusted accordingly. (7-1-16)

iii. Group services should only be delivered when the child's goals relate to benefiting from group interaction. (7-1-13)

**b. Behavioral Consultation.** Behavioral consultation assists other service professionals by consulting with the IEP team during the assessment process, performing advanced assessment, coordinating the implementation of the behavior implementation plan and providing ongoing training to the behavioral interventionist and other team members. (7-1-13)

i. Behavioral consultation cannot be provided as a direct intervention service. (7-1-13)

ii. Behavioral consultation must be limited to thirty-six (36) hours per student per year. (7-1-13)

**c. Medical Equipment and Supplies.** Medical equipment and supplies that are covered by Medicaid must be medically necessary, ordered by a physician, and prior authorized. Authorized items must be for use at the school where the service is provided. Equipment that is too large or unsanitary to transport from home to school and back may be covered, if prior authorized. The equipment and supplies must be for the student's exclusive use and must be transferred with the student if the student changes schools. All equipment purchased by Medicaid belongs to the student. (7-1-16)

**d. Nursing Services.** Skilled nursing services must be provided by a licensed nurse, within the scope of his or her practice. Emergency, first aid, or non-routine medications not identified on the plan as a health-related service are not reimbursed. (7-1-16)

**e. Occupational Therapy and Evaluation.** Occupational therapy and evaluation services for vocational assessment, training or vocational rehabilitation are not reimbursed. (3-30-07)

**f. Personal Care Services.** School based personal care services include medically oriented tasks

having to do with the student's physical or functional requirements. Personal care services do not require a goal on the plan of service. The provider must deliver at least one (1) of the following services: (7-1-16)

i. Basic personal care and grooming to include bathing, care of the hair, assistance with clothing, and basic skin care; (7-1-13)

ii. Assistance with bladder or bowel requirements that may include helping the student to and from the bathroom or assisting the student with bathroom routines; (7-1-16)

iii. Assistance with food, nutrition, and diet activities including preparation of meals if incidental to medical need; (7-1-13)

iv. Assisting the student with physician-ordered medications that are ordinarily self-administered, in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 490.05; (7-1-13)

v. Non-nasogastric gastrostomy tube feedings, if the task is not complex and can be safely performed in the given student care situation, and the requirements are met in accordance with IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Subsection 303.01. (7-1-13)

g. Physical Therapy and Evaluation. (3-30-07)

h. Psychological Evaluation. (3-30-07)

i. Psychotherapy. (3-30-07)

j. Skills Building/Community Based Rehabilitation Services (CBRS) ~~Services and Evaluation. Community Based Rehabilitation Services and evaluation services that~~ Skills Building/CBRS are interventions to reduce the student's disability by assisting in gaining and utilizing skills necessary to participate in school. They are designed to build competency and confidence while increasing mental health and/or decreasing behavioral symptoms. Skills Building/CBRS provides ~~Training~~ training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, and coping skills ~~are types of interventions that may be reimbursed. This~~ These services is are intended to prevent placement of the student into a more restrictive educational situation. (7-1-16)(    )

k. Speech/Audiological Therapy and Evaluation. (3-30-07)

l. Social History and Evaluation. (3-30-07)

m. Transportation Services. School districts and charter schools can receive reimbursement for mileage for transporting a student to and from home and school when: (7-1-16)

i. The student requires special transportation assistance, a wheelchair lift, an attendant, or both, when medically necessary for the health and safety of the student; (3-28-18)

ii. The transportation occurs in a vehicle specifically adapted to meet the needs of a student with a disability; (3-30-07)

iii. The student requires and receives another Medicaid reimbursable service billed by the school-based services provider, other than transportation, on the day that transportation is being provided; (3-30-07)

iv. Both the Medicaid-covered service and the need for the special transportation are included on the student's plan; and (3-30-07)

v. The mileage, as well as the services performed by the attendant, are documented. See Section 855 of these rules for documentation requirements. (3-20-14)

n. Interpretive Services. Interpretive services needed by a student who is deaf or does not adequately

speaking or understanding English and requires an interpreter to communicate with the professional or paraprofessional providing the student with a health-related service may be billed with the following limitations: (7-1-13)

i. Payment for interpretive services is limited to the specific time that the student is receiving the health-related service; documentation for interpretive service must include the Medicaid reimbursable health-related service being provided while the interpretive service is provided. (7-1-16)

ii. Both the Medicaid-covered service and the need for interpretive services must be included on the student's plan; and (3-30-07)

iii. Interpretive services are not covered if the professional or paraprofessional providing services is able to communicate in the student's primary language. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**855. SCHOOL-BASED SERVICE: PROVIDER QUALIFICATIONS AND DUTIES.**

Medicaid will only reimburse for services provided by qualified staff. The following are the minimum qualifications for providers of covered services: (7-1-13)

**01. Behavioral Intervention.** Behavioral intervention must be provided by or under the supervision of a professional. (7-1-13)

**a.** A behavioral intervention professional must meet the following: (7-1-13)

i. An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 028; or (7-1-13)

ii. An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 019; or (7-1-13)

iii. A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 029; or (7-1-13)

iv. Habilitative intervention professional who meets the requirements defined in IDAPA 16.03.10 "Medicaid Enhanced Plan Benefits," Section 685; or (7-1-13)

v. Individuals employed by a school as certified Intensive Behavioral Intervention (IBI) professionals prior to July 1, 2013, are qualified to provide behavioral intervention; and (7-1-13)

vi. Must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. This can be achieved by previous work experience gained through paid employment, university practicum experience, or internship. It can also be achieved by increased on-the-job supervision experience gained during employment at a school district or charter school. (7-1-13)

**b.** A paraprofessional under the direction of a qualified behavioral intervention professional, must meet the following: (7-1-13)

i. Must be at least eighteen (18) years of age; (7-1-13)

ii. Demonstrate the knowledge, have the skills needed to support the program to which they are assigned; and (7-1-16)

iii. Must meet the paraprofessional requirements under the Elementary and Secondary Education Act of 1965, as amended, Title I, Part A, Section 1119. (7-1-13)

c. A paraprofessional delivering behavioral intervention services must be under the supervision of a behavioral intervention professional or behavioral consultation provider. The professional must observe and review the direct services performed by the paraprofessional on a monthly basis, or more often as necessary, to ensure the paraprofessional demonstrates the necessary skills to correctly provide the behavioral intervention service. (7-1-13)

**02. Behavioral Consultation.** Behavioral consultation must be provided by a professional who has a Doctoral or Master's degree in psychology, education, applied behavioral analysis, or has a related discipline with one thousand five hundred (1500) hours of relevant coursework or training, or both, in principles of child development, learning theory, positive behavior support techniques, dual diagnosis, or behavior analysis (may be included as part of degree program); and who meets one (1) of the following: (7-1-13)

a. An individual with an Exceptional Child Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 028. (7-1-13)

b. An individual with an Early Childhood/Early Childhood Special Education Blended Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 019. (7-1-13)

c. A Special Education Consulting Teacher who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity" Section 029. (7-1-13)

d. An individual with a Pupil Personnel Certificate who meets the qualifications defined under IDAPA 08.02.02, "Rules Governing Uniformity," Section 027, excluding a licensed registered nurse or audiologist. (7-1-13)

e. An occupational therapist who is qualified and registered to practice in Idaho. (7-1-13)

f. Therapeutic consultation professional who meets the requirements defined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 685. (7-1-13)

**03. Medical Equipment and Supplies.** See Subsection 853.03 of these rules. (3-20-14)

**04. Nursing Services.** Nursing services must be provided by a licensed registered nurse (RN) or by a licensed practical nurse (LPN) licensed to practice in Idaho. (7-1-13)

**05. Occupational Therapy and Evaluation.** For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

**06. Personal Care Services.** Personal care services must be provided by or under the direction of a registered nurse licensed by the State of Idaho. (7-1-13)

a. Providers of PCS must have at least one (1) of the following qualifications: (7-1-13)

i. Licensed Registered Nurse (RN). A person currently licensed by the Idaho State Board of Nursing as a licensed registered nurse; (7-1-13)

ii. Licensed Practical Nurse (LPN). A person currently licensed by the Idaho State Board of Nursing as a licensed practical nurse; (7-1-16)

iii. Certified Nursing Assistant (CNA). A person currently certified by the State of Idaho; or (7-1-16)

iv. Personal Assistant. A person who meets the standards of Section 39-5603, Idaho Code, and receives training to ensure the quality of services and meets the paraprofessional requirements under the Elementary and Secondary Education Act of 1965, as amended, Title 1, Part A, Section 1119. The assistant must be at least age eighteen (18) years of age. Medically-oriented services may be delegated to an aide in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." The licensed registered nurse may require a CNA if, in their professional judgment, the student's medical condition warrants a CNA. (7-1-16)

**b.** The licensed registered nurse (RN) must review or complete, or both, the PCS assessment and develop or review, or both, the written plan of care annually. Oversight provided by the RN must include all of the following: (7-1-16)

- i.** Development of the written PCS plan of care; (7-1-13)
- ii.** Review of the treatment given by the personal assistant through a review of the student's PCS service detail reports as maintained by the provider; and (7-1-16)
- iii.** Reevaluation of the plan of care as necessary, but at least annually. (7-1-13)

**c.** The RN must conduct supervisory visits on a quarterly basis, or more frequently as determined by the IEP team and defined as part of the PCS plan of care. (7-1-16)

**07. Physical Therapy and Evaluation.** For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

**08. Psychological Evaluation.** A psychological evaluation must be provided by a: (7-1-13)

- a.** Licensed psychiatrist; (7-1-13)
- b.** Licensed physician; (7-1-13)
- c.** Licensed psychologist; (7-1-13)
- d.** Psychologist extender registered with the Bureau of Occupational Licenses; or (7-1-13)
- e.** Endorsed or certified school psychologist. (7-1-16)

**09. Psychotherapy.** Provision of psychotherapy services must have, at a minimum, one (1) or more of the following credentials: (7-1-13)

- a.** Psychiatrist, M.D.; (7-1-13)
- b.** Physician, M.D.; (7-1-13)
- c.** Licensed psychologist; (7-1-13)
- d.** Licensed clinical social worker; (7-1-13)
- e.** Licensed clinical professional counselor; (7-1-13)
- f.** Licensed marriage and family therapist; (7-1-13)
- g.** Certified psychiatric nurse (R.N.), as described in Subsection 707.13 of these rules; (7-1-13)
- h.** Licensed professional counselor whose provision of psychotherapy is supervised in compliance with IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; (7-1-13)
- i.** Licensed masters social worker whose provision of psychotherapy is supervised as described in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners"; (7-1-13)
- j.** Licensed associate marriage and family therapist whose provision of psychotherapy is supervised as described in IDAPA 24.15.01, "Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists"; or (7-1-13)

k. Psychologist extender, registered with the Bureau of Occupational Licenses, whose provision of diagnostic services is supervised in compliance with IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners." (7-1-13)

10. Skills Building/Community Based Rehabilitation Services (CBRS). Skills Building/CBRS must be provided by one (1) of the following. Skills Building/Community Based Rehabilitation Services (CBRS) providers who is not required to have a PRA credential must be one (1) of the following: (7-1-16)( )

- a. Licensed physician, licensed practitioner of the healing arts; (7-1-16)
- b. Advanced practice registered nurse; (7-1-16)
- c. Licensed psychologist; (7-1-13)
- d. Licensed clinical professional counselor or professional counselor; (7-1-13)
- e. Licensed marriage and family therapist; (7-1-16)
- f. Licensed masters social worker, licensed clinical social worker, or licensed social worker; (7-1-13)
- g. Psychologist extender registered with the Bureau of Occupational Licenses; (7-1-13)
- h. Licensed registered nurse (RN); (7-1-13)
- i. Licensed occupational therapist; (7-1-13)
- j. Endorsed or certified school psychologist; (7-1-16)
- k. Skills Building/Community Based Rehabilitation Services specialist. A Skills Building/CBRS specialist ~~is~~ must: (7-1-16)( )
  - i. Be Aan individual who has a Bachelor's degree and holds a current PRA credential; or (3-20-14)( )
  - ii. Be Aan individual who has a Bachelor's degree or higher, but does not hold a current PRA credential and was hired on or after November 1, 2010, to work as a Skills Building/CBRS specialist to deliver Medicaid-reimbursable mental health services. This individual may continue to do so provide Medicaid-reimbursable Skills Building/CBRS without a current PRA credential for a period not to exceed thirty (30) months from the initial date of hire. This thirty-month (30) period does not restart with new employment as a Skills Building/CBRS specialist when transferring to a new school district, charter school, or agency. The individual must show documentation that they are working towards this certification obtaining the required PRA credential. In order to continue providing Skills Building/CBRS as a Skills Building/CBRS specialist beyond a total period of thirty (30) months from the date of hire, the worker individual must have completed a certificate program or earned a certification in psychiatric rehabilitation based upon the primary population with whom he works in accordance with the requirements set by the PRA obtained the required current PRA credential; (7-1-16)( )
  - iii. Be under the supervision of a licensed behavioral health professional, a physician, nurse, or an endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision of the specialist to review treatment provided to student participants on an ongoing basis. The frequency of the one-to-one (1:1) supervision must occur at least on a monthly basis. Supervision can be conducted using telehealth when it is equally effective as direct on-site supervision; and ( )
  - iv. Have a Credential required for CBRS specialists. (7-1-16)( )
- (1) Applicants Skills Building/CBRS specialists who intend to work primarily with adults, age eighteen (18) or older, must become a Certified Psychiatric Rehabilitation Practitioner in accordance with the PRA

~~requirements~~ obtain a current PRA credential to work with adults. (3-20-14)( )

~~(a) Applicants must be under the supervision of a licensed behavioral health professional, a physician, nurse, or a endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision to review treatment provided to student participants on an ongoing basis. The frequency of the 1:1 supervision must occur at least on a monthly basis.~~ (7-1-16)

~~(b) CBRS supervision can be conducted using telehealth when it is equally effective as direct on site supervision.~~ (7-1-16)

(2) Applicants Skills Building/CBRS specialists who intend to work primarily with adults, but also ~~intend to work~~ with participants under the age of eighteen (18), must obtain a current PRA credential to work with adults, and must have additional training addressing children's developmental milestones, or have evidence of classroom hours in equivalent courses. The ~~worker's individual's~~ supervisor must determine the scope and amount of training the ~~worker individual~~ needs in order to work competently with children assigned to the ~~worker's individual's~~ caseload. (3-20-14)( )

~~(a) Applicants must be under the supervision of a licensed behavioral health professional staff, a physician, nurse, or a endorsed/certified school psychologist. The supervising practitioner is required to have regular one-to-one (1:1) supervision to review treatment provided to student participants on an ongoing basis. The frequency of the 1:1 supervision must occur at least on a monthly basis.~~ (7-1-16)

~~(b) CBRS supervision can be conducted using telehealth when it is equally effective as direct on site supervision.~~ (7-1-16)

(3) Applicants Skills Building/CBRS specialists who intend to work primarily with children under the age of eighteen (18) must obtain a ~~certificate in children's psychiatric rehabilitation in accordance with the PRA requirements~~ current PRA credential to work with children. (3-20-14)( )

(4) Applicants Skills Building/CBRS specialists who intend to primarily work with children, but ~~who~~ also ~~intend to~~ work with participants eighteen (18) years of age or older, must obtain a current PRA credential to work with children, and must have additional training or have evidence of classroom hours addressing adult issues in psychiatric rehabilitation. The ~~worker's individual's~~ supervisor must determine the scope and amount of training the worker needs in order to competently work with adults assigned to the ~~worker's individual's~~ caseload. (3-20-14)( )

**11. Speech/Audiological Therapy and Evaluation.** For therapy-specific rules, refer to Sections 730 through 739 of these rules. (7-1-16)

**12. Social History and Evaluation.** Social history and evaluation must be provided by a licensed registered nurse (RN), psychologist, M.D, school psychologist, certified school social worker, or by a person who is licensed and qualified to provide social work in the state of Idaho. (7-1-13)

**13. Transportation.** Transportation must be provided by an individual who has a current Idaho driver's license and is covered under vehicle liability insurance that covers passengers for business use. (7-1-13)

**14. Therapy Paraprofessionals.** The schools may use paraprofessionals to provide occupational therapy, physical therapy, and speech therapy if they are under the supervision of the appropriate professional. The services provided by paraprofessionals must be delegated and supervised by a professional therapist as defined by the appropriate licensure and certification rules. The portions of the treatment plan that can be delegated to the paraprofessional must be identified in the IEP or transitional IFSP. (7-1-16)

**a.** Occupational Therapy (OT). Refer to IDAPA 24.06.01, "Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants," for qualifications, supervision, and service requirements. (7-1-16)

**b.** Physical Therapy (PT). Refer to IDAPA 24.13.01, "Rules Governing the Physical Therapy



Licensure Board,” for qualifications, supervision and service requirements. (7-1-16)

c. Speech-Language Pathology (SLP). Refer to IDAPA 24.23.01, “Rule of the Speech and Hearing Services Licensure Board,” and the American Speech-Language-Hearing Association (ASHA) guidelines for qualifications, supervision and service requirements for speech-language pathology. The guidelines have been incorporated by reference in Section 004 of these rules. (7-1-16)

i. Supervision must be provided by an SLP professional as defined in Section 734 of this chapter of rules. (7-1-16)

ii. The professional must observe and review the direct services performed by the paraprofessional on a monthly basis, or more often as necessary, to ensure the paraprofessional demonstrates the necessary skills to correctly provide the SLP service. (7-1-16)

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**

**16.03.09 – MEDICAID BASIC PLAN BENEFITS**

**DOCKET NO. 16-0309-1810**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202(b), Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<b>PUBLIC HEARING</b>
<b>Tuesday, October 23, 2018 - 10:30 a.m. (MDT)</b>
<b>Department of Health &amp; Welfare Medicaid Central Office 3232 Elder Street Conference Room D-East and D-West Boise, ID 83705</b>
<b>TELECONFERENCE CALL-IN</b>
<b>Call in number: 1-240-454-0879 Meeting access code: 805 638 537 Meeting password: 4jsvE7p8 (45783778 from phones)</b>

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These rule changes were prompted by upcoming changes in federal regulations specific to third-party liability. This rule change will remove the prenatal exemption language from the third-party liability rules to align with changes in the Balanced Budget Act of 2018.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There is no anticipated fiscal impact to the State General Fund or any other funds for this rule change. The proposed rule changes within this docket are required for federal compliance. This is part of Medicaid's normal daily operations and are typically conducted through its contract with its claims processing vendor as a routine business practice without requiring any additional federal or state funding.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes are required for compliance with federal laws.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Cindy Brock at (208) 364-1983.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
Fax: (208) 334-6558  
[dhwrules@dhw.idaho.gov](mailto:dhwrules@dhw.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1810**  
**(Only Those Sections With Amendments Are Shown.)**

**215. THIRD PARTY LIABILITY.**

**01. Determining Liability of Third Parties.** The Department will take reasonable measures to determine any legal liability of third parties for medical care and services rendered to a participant. (3-30-07)

**02. Third Party Liability as a Current Resource.** The Department is to treat any third party liability as a current resource when such liability is found to exist and payment by the third party has been made or will be made within a reasonable time. (3-30-07)

**03. Withholding Payment.** The Department must not withhold payment on behalf of a participant because of the liability of a third party when such liability, or the amount thereof, cannot be currently established or is not currently available to pay the participant's medical expense. (3-30-07)

**04. Seeking Third Party Reimbursement.** The Department will seek reimbursement from a third party when the party's liability is established after reimbursement to the provider is made, and in any other case in which the liability of a third party existed, but was not treated as a current resource, with the exceptions provided in Subsection 215.05 of this rule. (3-25-16)

**a.** The Department will seek reimbursement from a participant when a participant's liability is established after reimbursement to the provider is made; and (3-30-07)

**b.** In any other situation in which the participant has received direct payment from any third party resource and has not forwarded the money to the Department for services or items received. (3-30-07)

**05. Billing Third Parties First.** Medicaid providers must bill all other sources of direct third party payment, with the following exceptions: (3-25-16)

**a.** When the resource is a court-ordered absent parent and there are no other viable resources available, the claims will be paid and the resources billed by the Department; (3-25-16)

**b.** ~~Prenatal or p~~Preventive pediatric care including early and periodic screening and diagnosis. Screening and diagnosis program services include: ~~(3-25-16)~~( )

**i.** Regularly scheduled examinations and evaluations of the general physical, dental, and mental health, growth, development, and nutritional status of children under age twenty-one (21), provided according to guidance for child wellness exams published in the Medicaid General Provider and Participant Handbook; (3-25-16)

- ii. Immunizations recommended by the American Academy of Pediatrics immunization schedule; (3-25-16)
  - iii. Diagnosis services to identify the nature of an illness or other problem by examination of the symptoms. (3-25-16)
  - c. When prior authorization has been approved according to Section 883 of these rules, treatment services to control, correct, or ameliorate health problems found through diagnosis and screenings; (3-25-16)
  - d. If the claim is for ~~prenatal or~~ preventative pediatric care as described in Subsection 215.05.b of this rule, the Department will make payment for the service provided in its fee schedule and will seek reimbursement from the third party according to 42 U.S.C. 1396a(a)(25)(E). ~~(3-25-16)~~ ( )
- 06. Accident Determination.** When the participant's Medicaid card indicates private insurance and/or when the diagnosis indicates an accident for which private insurance is often carried, the claim will be suspended or denied until it can be determined that there is no other source of payment. (3-30-07)
- 07. Third Party Payments.** The Department will pay the provider the lowest amount of the following: (3-29-12)
- a. The provider's actual charge for the service; or (3-29-12)
  - b. The maximum allowable charge for the service as established by the Department in its pricing file. If the service or item does not have a specific price on file, the provider must submit supporting documentation to the Department. Reimbursement will be based on the documentation; or (3-29-12)
  - c. The third party-allowed amount minus the third party payment, or the patient liability as indicated by the third party. (3-29-12)
- 08. Subrogation of Third Party Liability.** In all cases where the Department will be required to pay medical expenses for a participant and that participant is entitled to recover any or all such medical expenses from any third party, the Department will be subrogated to the rights of the participant to the extent of the amount of medical assistance benefits paid by the Department as the result of the occurrence giving rise to the claim against the third party. (3-30-07)
- a. If litigation or a settlement in such a claim is pursued by the medical assistance participant, the participant must notify the Department. (3-30-07)
  - b. If the participant recovers funds, either by settlement or judgment, from such a third party, the participant must repay the amount of benefits paid by the Department on his behalf. (3-30-07)
- 09. Subrogation of Legal Fees.** (3-30-07)
- a. If a medical assistance participant incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim to which the Department is subrogated, the amount which the Department is entitled to recover, or any lesser amount which the Department may agree to accept in compromise of its claim, will be reduced by an amount which bears the same relation to the total amount of attorney fees and court costs actually paid by the participant as the amount actually recovered by the Department, exclusive of the reduction for attorney fees and court costs, bears to the total amount paid by the third party to the participant. (3-30-07)
  - b. If a settlement or judgment is received by the participant which does not specify portion of the settlement or judgment which is for payment of medical expenses, it will be presumed that the settlement or judgment applies first to the medical expenses incurred by the participant in an amount equal to the expenditure for benefits paid by the Department as a result of the payment or payments to the participant. (3-30-07)

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE**

**16.03.10 – MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1807**

**NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 4, 2018.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202(b), 56-264, and 56-1610, Idaho Code, and Sections 1905(a), 1915(c), and 1915(i), of the Social Security Act (SSA).

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**PUBLIC HEARING**  
**Tuesday, October 16, 2018**  
**9:30 a.m. (MDT)**

**Medicaid Central Office**  
**3232 West Elder Street**  
**Conference Room D-East**  
**Boise, ID 83705**

**TELECONFERENCE CALL-IN**  
**Toll Free: 1-877-820-7831**  
**Participant Code: 701700**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These rules are being amended to add the requirement for termination of enrollment when a participant no longer meets Home and Community Based Services (HCBS) eligibility criteria, as required in Centers for Medicare and Medicaid Service (CMS) guidance for state programs operating under the federal authority of Sections 1915(c) and 1915(i) of the Social Security Act.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rule changes are necessary to align IDAPA 16.03.10 with federal requirements for terminating the enrollment of a participant who no longer meets requirements in Sections 1915(c) and 1915(i) of the SSA and Idaho's Medicaid State Plan. The Centers for Medicare and Medicaid Services approved the State Plan application contingent on the Department's assurance these rules would be amended at the earliest possible time.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking is estimated to be cost-neutral with no fiscal impact to any state or federal funds. There is no estimate on the number of participants who will be impacted by this rule change as participants have the choice on whether to access services under the Sections 1915(c) and 1915(i) of the SSA. Administrative costs will be handled by the current staff.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules are being adopted as temporary with an effective date of October 4, 2018. They are being amended to meet federal requirements under Idaho's approved Medicaid State Plan.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by reference in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Clay Lord at (208) 364-1979.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2018.

Dated this 31st day of August, 2018.

Tamara Prisock  
DHW – Administrative Rules Unit  
450 W. State Street – 10th Floor  
P.O. Box 83720  
Boise, ID 83720-0036  
Phone: (208) 334-5500  
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 16-0310-1807  
(Only Those Sections With Amendments Are Shown.)**

**310. HOME AND COMMUNITY BASED SERVICES.**

Home and Community Based Services (HCBS) are those ~~long-term~~ services and supports that assist eligible participants to remain in their home and community. The federal authorities under 42 CFR 441.301, 42 CFR 441.710, and 42 CFR 441.725 require the state to deliver HCBS in accordance with the rules described in Sections 310 through 318~~9~~ of these rules. HCBS include the following: ~~(7-1-16)~~(10-4-18)T

**01. Children's Developmental Disability Services.** Children's developmental disability services as defined in Sections 663 and 683 of these rules. (7-1-16)

**02. Adult Developmental Disability Services.** Adult developmental disability services as defined in Sections 645 through 659, 703, and 705 of these rules. (7-1-16)

**03. Consumer-Directed Services.** Consumer-directed services as defined in IDAPA 16.03.13, "Consumer-Directed Services." (7-1-16)

**04. Aged and Disabled Waiver Services.** Aged and disabled waiver services as defined in Section 326 of these rules. (7-1-16)

**05. Personal Care Services.** Personal care services as defined in Section 303 of these rules. (7-1-16)

**06. Services for Children with Serious Emotional Disturbance (SED).** ~~SED services, as defined in Section 368 of these rules, for children with serious emotional disturbance (SED) who are participants enrolled in the Medicaid SED program in support of Youth Empowerment Services (YES) Program as defined in Section 638 of these rules.~~ ~~(3-28-18)~~(10-4-18)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**319. ~~(RESERVED)~~ HCBS -- Termination Of Participant Enrollment.**

The Department has the authority to terminate a participant from enrollment in an HCBS waiver or State Plan Option benefit described in Subsections 310.01 through 310.04, and 310.06 of these rules. (10-4-18)T

**01. Requirements to Maintain HCBS Program Enrollment.** After initial eligibility has been determined, a participant must meet the following conditions of participation to maintain enrollment in an HCBS waiver or State Plan Option: (10-4-18)T

- a.** Complete an assessment; (10-4-18)T
- b.** Complete a state-approved person-centered Medicaid service plan; (10-4-18)T
- c.** Complete an annual redetermination of eligibility and assessment; (10-4-18)T
- d.** Continue to comply with other state-established criteria for determining eligibility under the State Plan for medical assistance; and (10-4-18)T
- e.** Continue to comply with federal and state laws and rules, and the provisions of the state's applicable approved 1915(c) waiver or the 1915(i) HCBS state plan option that relate to eligibility and continuation of enrollment. (10-4-18)T

**02. Conditions for Termination of Enrollment.** The Department will terminate the enrollment of a participant who is enrolled in an HCBS waiver or State Plan option, or who has accessed Medicaid coverage through an HCBS waiver or State Plan option under any of the following conditions. The participant: (10-4-18)T

- a.** Is determined by a physician or other licensed practitioner of the healing arts acting within the scope of their practice not to need any waiver or State Plan option service; (10-4-18)T
- b.** Declines to engage in person-centered planning; (10-4-18)T
- c.** Does not meet other HCBS requirements provided in Sections 310 through 319 of these rules; (10-4-18)T
- d.** Is non-responsive to multiple contact attempts by the Department or its designee to engage the participant in fulfilling requirements for participation; or (10-4-18)T
- e.** Elects not to use any HCBS waiver service or HCBS State Plan option service according to the terms of the approved waiver or State Plan option for thirty (30) consecutive days. (10-4-18)T

**03. Continuous Eligibility for Children Under Age Nineteen.** Continuous health care assistance eligibility for children under age nineteen (19), as provided in IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." does not apply for a participant who is enrolled in the Medicaid SED program in support of Youth Empowerment Services (YES) as provided in Sections 635 through 638 of these rules. (10-4-18)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**645. HOME AND COMMUNITY BASED SERVICES (HCBS) STATE PLAN OPTION.**

Home and community based services are provided through the HCBS State Plan option as allowed in Section 1915(i) of the Social Security Act for adults with developmental disabilities who do not meet the ICF/ID level of care. HCBS state plan option services must comply with Sections 310 through 318~~9~~, and Sections 647~~5~~ through 659~~7~~ of these rules. (~~7-1-16~~) (10-4-18)T